IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3870 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K S MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL FOR MR MR ANAND for Petitioner

NOTICE SERVED for Respondent No. 1

MS DARSHNA PANDIT AGP for State

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The petitioner, who was initially recruited as a peon in 1965, became a clerk by order dated 18th April 1980 and started working in his promotional post from 21st April 1980. Initially, he was promoted upto 28th

February 1981, but thereafter he continued to work in the said promotional post of clerk. The grievance of the petitioner was that, for no valid reason, since December 1990, he was not being paid his monthly salary, and was orally informed that there was some objection raised by the Pay & Accounts Office. According to the petitioner, by order dated 26th March 1987, he was posted in a leave vacancy, while his juniors continued in the regular posts. On realization of this mistake, the Department by an order dated 4th April 1987, directed that senior person should be absorbed in regular vacancy, and accordingly, the petitioner was put back in a regular vacancy.

2. From the affidavit in reply that has been filed by the Director of Archeology, it transpires that, in March 1981, the Government of India decided to close the offices at Palanpur, Gandhinagar and Ahmedabad. The State Government made a proposal for additional posts in the office of the respondent No.2 on 6th May 1987, but that was not accepted by the Central Government. Therefore, another proposal was mooted for reopening the Palanpur Circle, which was pending with the Central Government. It is pointed out that the petitioner was posted on a leave vacancy under the set up of the respondent No.2, because otherwise one employee Mr. Balondra was required to be declared surplus, and would have had to go home and the petitioner was required to be transferred to Rajkot. It is stated that, with a view to see that one employee did not face unemployment and also to see that the petitioner was not required to go to Rajkot, an arrangement was made of putting the petitioner in a leave vacancy. It is stated that the petitioner was to be placed in the regular vacancy and there was no prejudice likely to be caused to the petitioner, inasmuch as his seniority was not affected, nor his pay packet was adversely affected. It is stated in para 8 of the affidavit in reply that the petitioner was required to be paid the arrears of salary for the period from December 1990 to April 1991 as per the directions of this Court issued on 25th July 1991.

3. It is abundantly clear from the affidavit in reply filed on behalf of the respondents that the petitioner's rights to continue in the regular post were not to be adversely affected, and it was only with a view to meet with the administrative exigencies that he was temporarily posted in a leave vacancy. As stated in para 5 of the affidavit in reply, his seniority was not to be adversely affected. Thus, since no rights of the petitioner were adversely affected, and only some interim

arrangement was made of posting him in a leave vacancy, none of the petitioner's rights have been infringed. Since the salary, as directed, was paid and the respondents have accepted the petitioner's entitlement, no relief is required to be granted at this stage in this petition.

4. The petition is therefore rejected. Rule is discharged with no orders as to costs.

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